

**MINUTES OF THE  
REVENUE AND TAXATION INTERIM COMMITTEE**  
Wednesday, October 21, 2015 – 1:15 p.m. – Room 445 State Capitol

**Members Present:**

Sen. Deidre M. Henderson, Senate Chair  
Sen. Wayne A. Harper  
Sen. Howard A. Stephenson  
Rep. Joel K. Briscoe  
Rep. Kim Coleman  
Rep. Rich Cunningham  
Rep. Steve Eliason  
Rep. Eric K. Hutchings  
Rep. Ken Ivory  
Rep. John Knotwell  
Rep. Jeremy A. Peterson  
Rep. Marie H. Poulson  
Rep. Jon E. Stanard

**Members Absent:**

Sen. Curtis S. Bramble  
Sen. Jim Dabakis  
Sen. Gene Davis  
Rep. Daniel McCay, House Chair  
Rep. Gage Froerer

**Staff Present:**

Mr. Leif G. Elder, Policy Analyst  
Mr. Bryant R. Howe, Assistant Director  
Ms. Andrea Valenti Arthur, Associate General Counsel  
Ms. Bree A. Frehner, Legislative Assistant

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Henderson called the meeting to order at 1:33 p.m.

**MOTION:** Rep. Cunningham moved to approve the minutes of the August 19, 2015, meeting. The motion passed unanimously. Rep. Hutchings and Rep. Ivory were absent for the vote.

Mr. John Valentine, Commissioner, Utah State Tax Commission, discussed "Utah State Tax Commission Annual Report 2013-2014: Sales Tax Exemptions." He stated that "NA" entries mean that (1) the commission does not collect the data because the exemption is long-standing and has no filing requirement, or (2) the commission does not publish the data to protect the privacy of the small number of taxpayers who claim the exemption. He noted that in future reports the commission will provide a more detailed explanation for why certain information is not given.

**2. Corporate Franchise and Income Taxes**

Mr. Elder presented "Utah Corporate Franchise and Income Tax Presentation," giving an overview of what the corporate franchise and income tax is, how much state revenue it generates, who pays the tax, and why the tax matters. He discussed constitutional issues that may result from eliminating the Utah corporate franchise and income tax.

Dr. Thomas Young, Senior Economist, Office of Legislative Fiscal Analyst, presented "Corporate Income Tax & Employment Growth," which explores corporate tax rates and employment growth over time. He compared both corporate tax rates and employment growth by year and by state. He showed that since the early 1990s a lower corporate tax burden has been correlated with higher employment growth.

Mr. Billy Hesterman, Vice President, Utah Taxpayers Association, favored lowering taxes but mentioned concern about taxing intangibles. He also recommended that the committee consider expanding the types of industries that can use single sales factor apportionment.

Mr. Jay Blain, Director of Policy and Research, Utah Education Association, commented that if the corporate income tax structure is altered then losses to the public education system need to be addressed.

Mr. Gary Thorup, attorney, Durham Jones and Pinegar, recommended that the committee consider Utah Constitution, Article XIII, Section 2, Subsection 5, where the definition of intangible property becomes important.

Sen. Stephenson requested that draft legislation on corporate franchise and income taxes be provided for the committee to consider at the November meeting. He mentioned a desire to hear from entities that would be affected by proposed changes.

### **3. Concurrent Resolution in Support of Sales and Use Tax Transactional Equity**

Sen. Harper addressed draft legislation "Concurrent Resolution in Support of Sales and Use Tax Transactional Equity" (2016FL0445/014). He discussed the need for action to be taken for fair, uniform, simplified, and constitutional collection and remittance of state and local sales and use taxes by both in-state and remote sellers. He encouraged the committee to adopt the resolution to encourage the United States Congress to pass the Remote Transactions Parity Act, H.R. 2775.

Rep. Coleman mentioned that the congressional bill currently makes an exemption for small sellers on the electronic marketplace and asked that Sen. Harper clarify that the resolution supports modifying that exemption to include all small sellers. Sen. Harper stated that the resolution does support modifying that exemption so that all small sellers are treated equally.

Rep. Poulson questioned whether it was wise to take action approving the congressional bill now since there is a risk that the bill could change. Sen. Harper responded that substantive amendments other than on the outstanding issue of an exemption for all small sellers are unlikely because other affected associations have been involved in crafting the congressional bill.

Rep. Eliason commented on Sen. Harper's leadership on the issue of sales and use tax transactional equity. He asked for clarification on what this would mean to Utah in terms of dollars, estimating that Utah is missing out on about \$120,000,000 in sales and use taxes annually. Sen. Harper concurred.

Mr. Dave Davis, President, Utah Retail Merchants Association, thanked Sen. Harper for his leadership on the issue of sales and use tax transactional equity and expressed support for the Senator's efforts.

Mr. Roger Tew, Utah League of Cities and Towns, applauded Sen. Harper's efforts on the issue of sales and use tax transactional equity and expressed support for the Senator's continuing work.

**MOTION:** Rep. Eliason moved that draft legislation "Concurrent Resolution in Support of Sales and Use Tax Transactional Equity" be adopted as a committee bill. The motion passed with Rep. Ivory voting in opposition.

Rep. Coleman asked for clarification that the resolution is contingent on changing the congressional bill to modify the exemption for small sellers on the electronic marketplace. Sen. Harper responded that approving the resolution means the committee supports the bill with the exemption modified so all small sellers are treated equally.

Rep. Ivory stated his support of the concept of sales and use tax transactional equity but mentioned discomfort with calling out congressional legislation by name and number when it is not yet finalized.

#### **4. Tax Commission Data Match Process**

Sen. Harper and Commissioner Valentine discussed draft legislation "Tax Commission Levy Process" (2016FL0462/009). Commissioner Valentine explained the process the State Tax Commission currently follows to collect delinquent taxes. He mentioned that the current process wastes taxpayer dollars and financial institutions' time. He explained the changes in draft legislation "Tax Commission Levy Process," which would allow the commission to simplify the process of collecting delinquent taxes by enacting an electronic depository institution data match system and commission levy process.

Rep. Cunningham inquired how many cases and how much in delinquent taxes this change would affect. Commissioner Valentine and Mr. Dee Talbot, Director of Taxpayer Services, State Tax Commission, discussed the number of cases requiring garnishments and the cost of these garnishments.

Rep. Cunningham asked what the cost would be to implement a data match system. Mr. Talbot responded that most financial institutions have already implemented a data match system since the institutions serve customers across state boundaries. Sen. Harper mentioned that the Office of Recovery Services uses a similar matching system. Commissioner Valentine noted that financial institutions would save in personnel costs and receive compensation to do data matching.

Rep. Briscoe asked about the risk of mission creep. Commissioner Valentine responded that the State Tax Commission is the only entity that can impose the levy and mentioned other checks on the process, including a check by the Legislature.

Rep. Coleman inquired whether the commission casts a wide net over all institutions when seeking data on delinquent taxpayers. Commissioner Valentine responded that the process currently requires the commission to guess and widely distribute garnishments. He and Mr. Talbot explained the process introduced by draft legislation "Tax Commission Levy Process."

Rep. Eliason asked whether financial institutions were supportive of this process. Commissioner Valentine and Sen. Harper were reluctant to speak on behalf of the financial institutions but mentioned their impressions that the financial institutions are supportive of the proposed process.

Rep. Peterson asked whether Utah would use this process for periphery financial institutions. Commissioner Valentine stated that the draft legislation does not expand State Tax Commission jurisdiction to financial institutions outside the state.

Rep. Stanard asked whether it would be good to allow courts to use a similar data match system to allow consumers to collect money owed to them. Commissioner Valentine mentioned concerns with privacy. Sen. Harper commented such a use is beyond the intent of the draft legislation.

Rep. Hutchings asked about consequences of using the proposed process to collect delinquent taxes from certain taxpayers, such as recently released inmates. Commissioner Valentine mentioned that the amount collected by the State Tax Commission and all governmental entities is limited by the garnishment statute. Mr. Talbot added that the draft legislation encourages a conference between the delinquent taxpayer and the commission in hopes of setting up a payment schedule.

Mr. Scott Simpson, President and Chief Executive Officer, Utah Credit Union Association, stated that the institutions he represents are mostly supportive of the draft legislation but mentioned minor concerns about the system introducing a negative effect on member relationships.

Sen. Stephenson inquired whether the proposed process would put any financial institution at a competitive disadvantage. Mr. Simpson responded that he did not think any institution would be placed at a competitive disadvantage.

Chair Henderson asked whether a member relationship issue occurs due to the Office of Recovery Services levy process. Mr. Simpson responded that there likely is an issue and mentioned that credit unions do not want to be tax collectors.

**MOTION:** Sen. Harper moved that draft legislation "Tax Commission Levy Process" be adopted as a committee bill. The motion passed unanimously.

## **5. Severance Tax for Oil and Gas**

Committee staff distributed draft legislation "Revenue and Taxation Amendments" (2016FL0233/007) and "Letter to State Tax Commission: Severance Tax."

Sen. Kevin Van Tassell noted that much of the money for school trust funds comes from the oil and natural gas industry. He mentioned that despite the industry's success in raising revenue, the recent Utah Supreme Court ruling in *Anadarko Petroleum Corp. v. Utah State Tax Commission* could increase the taxes the industry is required to pay. He commented on how this change harms the industry and makes Utah a less business friendly state. He mentioned the opportunity Utah has to raise more funds for schools as the market improves if action is taken to clarify the calculation of severance tax for oil and gas.

Mr. Lee Peacock, President, Utah Petroleum Association, discussed the importance of the severance tax for the Utah oil and natural gas industry. He explained how practice has shown that oil and gas should be valued at the wellhead so that the severance tax will be assessed fairly. He commented that the State Tax Commission recently disallowed a deduction for transportation and processing costs related to a state, federal, and Indian royalty for oil and gas. He stated that the industry is not asking for a tax break, just that the established and fair status quo be maintained.

Mr. Steve Young, attorney, Holland & Hart, on behalf of the Utah Petroleum Association, presented "Utah Oil & Gas Severance Tax Graphics." He explained the practice of valuing oil and gas at the wellhead and the potential tax increase under the new interpretation, which values oil and gas later in the process if the oil and gas is sold downstream and the taxpayers are on federal, state, or Indian property.

Responding to a question from Rep. Eliason, Mr. Young and Mr. Peacock clarified that very little product is lost in processing oil and natural gas. Mr. Young explained that the current practice allows the industry to deduct processing and transportation costs before paying the severance tax.

Sen. Stephenson stated that it is bad tax policy to apply the severance tax to a commodity after value is added through processing. He inquired whether the State Tax Commission could issue a private letter ruling when an action of the auditing or property tax division might change current practice, such as is the case with the change in severance tax application after the *Anadarko* decision.

Responding to a question from Rep. Briscoe, Mr. Young clarified the changes in draft legislation "Revenue and Taxation Amendments."

Rep. Cunningham commented on the real effects of struggling markets on Utah citizens. He encouraged the committee to carefully evaluate changes that affect the struggling oil and gas industry in order to allay the negative effects.

Rep. Stanard expressed a desire to know the fiscal impact of draft legislation "Revenue and Taxation Amendments." Ms. Leslee Katayama, economist, State Tax Commission, discussed forecasting of the severance tax done by the State Tax Commission. She mentioned that revenue impact from a court case would not be factored in until a final, nonappealable decision is made. Ms. Katayama and Chair Henderson discussed that the draft legislation does not have a fiscal impact because the severance taxes that would be collected as a result of the State Tax Commission ruling have not been collected before.

Mr. Clark Snelson, resident, addressed the *Anadarko* ruling, explaining the severance tax changes imposed by the ruling.

Mr. Lowell Braxton, representing Western Energy Alliance, stated support for the change provided by draft legislation "Revenue and Taxation Amendments."

Mr. Hesterman supported draft legislation "Revenue and Taxation Amendments" and mentioned concern with tax policy being set by an agency in a nonpublic setting.

**MOTION:** Sen. Harper moved that draft legislation "Revenue and Taxation Amendments" be adopted as a committee bill. The motion passed with Rep. Briscoe and Rep. Poulson voting in opposition. Rep. Hutchings and Rep. Ivory were absent for the vote.

Sen. Stephenson commented that the retrospective operation of the draft legislation would need to be evaluated to ensure that it is possible. Sen. Harper commented that adopting the draft legislation with the current retrospective date of January 30, 2015, establishes the committee's intent.

Rep. Poulson mentioned discomfort with not having enough knowledge at this point on the fiscal impact of draft legislation "Revenue and Taxation Amendments."

Chair Henderson discussed "Letter to State Tax Commission: Severance Tax," which asks the State Tax Commission to either not include or segregate any revenue that would be lost from severance taxes assessed in the manner established in the *Anadarko* ruling when evaluating the fiscal impacts of the committee bill.

**MOTION:** Rep. Stanard moved that "Letter to State Tax Commission: Severance Tax" be sent to the chairman of the State Tax Commission. The motion passed unanimously. Rep. Hutchings and Rep. Ivory were absent for the vote.

## **6. Other Items/Adjourn**

**MOTION:** Sen. Stephenson moved to open a committee bill file to direct the State Tax Commission to advise the auditing or property tax division when an action of either division, a court decision, or a statutory change would alter long-standing tax practices. The motion passed unanimously. Rep. Hutchings, Rep. Ivory, and Rep. Poulson were absent for the vote.

**MOTION:** Rep. Stanard moved to adjourn the meeting. The motion passed unanimously. Rep. Hutchings and Rep. Ivory were absent for the vote.

Chair Henderson adjourned the meeting at 3:49 p.m.